

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL A. BURNHART,	)	CASE NO. C06-0870-JLR-MAT
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DENYING PLAINTIFF'S
	)	MOTIONS TO CONSOLIDATE AND
REED HOLTGEERTS, et al.,	)	TO APPOINT COUNSEL
	)	
Defendants.	)	
_____	)	

This is a civil rights action brought under 42 U.S.C. § 1983. Currently pending before the Court are plaintiff's motion to consolidate and to dismiss one defendant, and plaintiff's motion for appointment of counsel. The Court, having considered plaintiff's pending motions, and the balance of the record, does hereby find and ORDER as follows:

(1) Plaintiff's motion to consolidate (Dkt. No. 17) is DENIED. Plaintiff seeks to consolidate the instant action with Case No. C06-361 and Case No. C06-816. Plaintiff contends that the three actions are interdependent and that they involve similar facts and evidence. A review of plaintiff's various complaints reveals that one involves plaintiff's medical needs (Case No. C06-361, Dkt. No. 6 at 3), the other involves a challenge under the federal Wiretap Act to

01 the monitoring of plaintiff's telephone calls by the Regional Justice Center (Case No. C06-816,  
02 Dkt. No. 22), and the instant complaint involves plaintiff's placement in administrative segregation  
03 (Dkt. No. 6 at 3). While it appears that there might some slight overlap in facts, the cases are not  
04 sufficiently similar to justify consolidation. Accordingly, this Court concludes that the cases  
05 should remain separate.

06 (2) Plaintiff also moves to have defendant Brian O'Farrell dismissed from this action.  
07 However, it does not appear from the record that petitioner ever served his motion to consolidate  
08 and to dismiss one defendant on counsel for defendants. While the Court was able to render a  
09 decision on plaintiff's motion to consolidate without the input of defendants' counsel, defendants  
10 should be provided an opportunity to address the motion to dismiss before the Court renders a  
11 decision on that issue. Accordingly, defendants' counsel is directed to file a response to plaintiff's  
12 motion to dismiss defendant Brian O'Farrell from this action not later than **December 22, 2006**.  
13 Plaintiff's motion to dismiss (Dkt. No. 17) is RE-NOTED for consideration on the same date.

14 (3) Plaintiff's motion for appointment of counsel (Dkt. No. 21) is DENIED. There is  
15 no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the Court,  
16 under 28 U.S.C. § 1915(e)(1), can request counsel to represent a party proceeding *in forma*  
17 *pauperis*, the Court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789  
18 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984);  
19 *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires  
20 an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to  
21 articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789  
22 F.2d at 1331.

01 Plaintiff has neither demonstrated a likelihood of success on the merits nor shown that, in  
02 light of the complexity of the legal issues involved, he is unable to articulate his claims pro se.  
03 Thus, plaintiff has not demonstrated that this case involves exceptional circumstances that warrant  
04 appointment of counsel at the present time.

05 (4) The Clerk shall send copies of this Order to plaintiff, to counsel for defendants, and  
06 to the Honorable James L. Robart.

07 DATED this 13th day of December, 2006.

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09 Mary Alice Theiler  
10 United States Magistrate Judge  
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